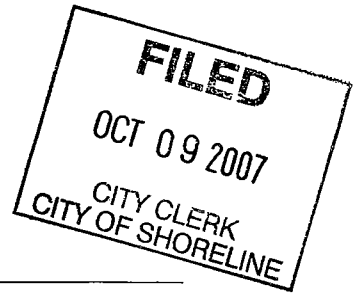


**CITY OF SHORELINE HEARING EXAMINER**  
**FINDINGS, CONCLUSIONS AND DECISION**  
**APPEAL OF SEPA THRESHOLD DETERMINATION**

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**PROJECT INFORMATION SUMMARY**

**Applicant:** D.R. Strong Consulting Engineers

**Location:** 4521 11<sup>th</sup> Avenue NE, Shoreline, WA

**Project Number:** 201584

**Proposed Project:** Preliminary Formal Subdivision to create six single family lots, a critical area tract, and an access/utility tract

**Appellant:** Paramount Park Neighborhood Group, Inc.

**SEPA Threshold Determination:** Determination of Nonsignificance (DNS)

**INTRODUCTION**

The Department of Planning and Development Services issued a Determination of Nonsignificance on the above-referenced project proposal on July 5, 2007. The Appellant, Paramount Park Neighborhood Group, Inc., filed an appeal on July 20, 2007. The hearing was scheduled for August 2, 2007, but was continued to September 20, 2007 and October 1, 2007, by order of the Examiner following a prehearing conference with the parties.

The matter was heard by the Hearing Examiner on September 20, 2007 (in conjunction with the Planning Commissions public hearing on the underlying project application) and on October 1, 2007. Represented at the hearing were the Appellant, Paramount Park Neighborhood Group, Inc., by Brian Derdowski (September 20, 2007) and Chris Eagen (October 1, 2007); the City, by Flannery Collins, Assistant City Attorney; and the applicant, by Gary East, attorney at law.

For purposes of this decision, all section numbers refer to the Shoreline Municipal Code (SMC or Code) unless otherwise indicated. After due consideration of the evidence elicited during the appeal hearing, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

### FINDINGS OF FACT

#### Proposal and site

1. The project proposal is for a preliminary formal subdivision to create six lots on property addressed as 14521 11<sup>th</sup> Avenue NE. The property is approximately 69,260 square feet in size, and is undeveloped. The site contains critical areas, including a steep slope area and stream buffer area for Littles Creek, which are located generally at the north and west portion of the site.

2. The property is bordered by NE 145<sup>th</sup> Street to the south, unimproved 10<sup>th</sup> Avenue NE to the west, 11<sup>th</sup> Avenue NE right-of-way to the east, and other properties to the north. The right-of-way for that portion of 10<sup>th</sup> Avenue NE abutting the site is located entirely within the 115-foot required stream buffer for Littles Creek.

#### Department review

3. Glen Pickus, at the time a Planner II for the City, conducted the SEPA review of the proposal. The proposal which was considered and reviewed by Mr. Pickus did not propose full street improvements to the 10<sup>th</sup> Avenue NE frontage abutting the subject property, as would normally be required by SMC 20.70.030.A. The Director of the Department, as responsible SEPA official, subsequently issued a Determination of Nonsignificance (DNS) for the proposal on July 5, 2007.

4. The City issued a Variance from Engineering Standards for the project few weeks later, which waived the requirement for full street improvements for 10<sup>th</sup> Avenue NE. The variance was granted in order to minimize impacts to the stream buffer, since the 10<sup>th</sup> Avenue right-of-way was entirely within the buffer. The variance decision also notes that full improvements would be unnecessary, since the proposed new lots would not use 10<sup>th</sup> Avenue for access and there was no foreseeable reason for the 10<sup>th</sup> Avenue NE to ever be extended south to NE 145<sup>th</sup> Street. The variance, as a minor land use decision under WAC 197-11-800, was categorically exempt from SEPA review.

5. Future development of the site will be subject to all of the City's applicable codes and the site development permit process. The site development plans will address details of construction at the site, and the City may require SEPA review of the development of the site.

#### Appeal

6. The Appellant appealed the DNS on July 20, 2007, and its letter of appeal identified many "procedural objections" and "substantive objections" to the decision. On September 27, 2007, the Appellant moved to have the decision remanded to the City, on the grounds that "no SEPA notice was sent to the affected tribes." The City moved to exclude this claim as being a new issue that had not been identified in the appeal letter or during the prehearing conference on September 17, 2007. The City's motion was granted by order of the Hearing Examiner on September 28, 2007.

7. At the hearing, the Appellant stated that it was withdrawing its SEPA appeal as to all but two issues. The Appellant indicated the remaining issues in its appeal were: that the City had failed to provide SEPA notice to affected tribes, and that the City had erred by failing to consider associated variances or other permits related to the subdivision application. The Appellant contends that regardless of whether any other permits are categorically exempt from SEPA review, they nevertheless represent interdependent proposals that should be reviewed with the subdivision proposal under WAC 197-11-060.

8. Because the issue of notice to affected tribes was not timely raised, and was disposed of by the September 28, 2007 Hearing Examiner Order, the only issue for consideration in this appeal is whether the City erred by failing to consider any associated variances or other permits.

### **CONCLUSIONS**

1. The Hearing Examiner has jurisdiction over this appeal pursuant Chapter 20.30 SMC. The City's SEPA decision is entitled to substantial weight; SMC 20.30.680.B.2. The Appellant bears the burden of showing that the City's decision is not supported by a preponderance of the evidence; Rule 9.8, Shoreline Hearing Examiner Rules of Procedure.

2. As noted above, the Appellant at hearing withdrew all but two issues in its appeal, and one of those issues, concerning notice to affected tribes, was disposed of prior to hearing. Therefore, the sole issue before the Examiner in this appeal is whether the City erred by failing to consider associated variances or other permits as related or interdependent proposals pursuant to WAC 197-11-060, even if those permits were categorically exempt from SEPA review.

3. The variance from engineering standards waived full street improvements along 10<sup>th</sup> Avenue NE for this project, but the Department considered the proposal in light of the lack of street improvements into account during its SEPA review. Thus, even if the variance could be considered a related or interdependent proposal, the impacts of the proposed variance were considered during the SEPA review of the proposed subdivision. No evidence in the record identifies any other "associated variances and other permits" that were required to have been considered as part of the SEPA review of the subdivision proposal. The appeal should therefore be denied.

### **DECISION**

The Director's Determination of Nonsignificance is hereby **AFFIRMED**.

Entered this 5th day of October, 2007.



Anne Watanabe  
Hearing Examiner

**Concerning Further Review**

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

SMC 20.30.250 provides that "Any judicial appeal shall be filed in accordance with state law. If there is not a statutory time limit for filing a judicial appeal, the appeal shall be filed within 21 calendar days after a final decision is issued by the City."

**EXHIBITS**

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|------------------|---|
| <b>Exhibit 1</b> | Notice of Public Hearing of the Planning Commission and SEPA Determination<br>Dated July 5, 2007  |
| <b>Exhibit 2</b> | Original Appeal Document and Receipt of Appeal Fee<br>Dated July 20, 2007   |
| <b>Exhibit 3</b> | Letter from City Clerk Scott Passey to Designated Appellant Representative, Jan Stewart RE: Rescheduling of Appeal Hearing, Project No. 201584<br>Dated August 3, 2007                              |
| <b>Exhibit 4</b> | Letter from Attorney Gary W. East to Hearing Examiner and referenced persons in interest RE: Plateau at Jackson, Preliminary Formal Subdivision Application #201584<br>Dated August 6, 2007         |
| <b>Exhibit 5</b> | Letter from Jan Stewart and Vicki Westberg to City Clerk Scott Passey RE: Preliminary Formal Subdivision #201584 D.R. Strong Consulting Engineers, Applicant SEPA Appeal<br>Dated September 5, 2007 |
| <b>Exhibit 6</b> | City of Shoreline List of Documents<br>Dated September 6, 2007  |
| <b>Exhibit 7</b> | City of Shoreline Motion to Compel<br>Dated September 5, 2007   |
| <b>Exhibit 8</b> | Order Scheduling Hearing Conference<br>Dated September 6, 2007  |

- Exhibit 9** Order Continuing PreHearing Conference and Hearing  
Dated September 10, 2007
- Exhibit 10** Order  
Dated September 12, 2007
- Exhibit 11** Letter from Jan Stewart to City Clerk's Office, City of Shoreline  
RE: File #201584 (appointing new Appellant Representative)  
Dated September 14, 2007
- Exhibit 12** Letter from Brian Derdowski to Anne Watanabe  
Dated September 17, 2007
- Exhibit 13** City of Shoreline Witness List  
Dated September 17, 2007
- Exhibit 14** City of Shoreline Modified List of Documents  
Dated September 17, 2007
- Exhibit 15** Partial List of Witnesses  
Dated September 20, 2007
- Exhibit 16** Partial List of Exhibits  
Dated September 20, 2007
- Exhibit 17** List of Appellant questions and needs from the City  
Date stamped September 20, 2007
- Exhibit 18** Declaration of Kristie Anderson, City of Shoreline Code  
Enforcement Officer  
Dated September 24, 2007
- Exhibit 19** Response to Appellants' Witness List and Appellants' Request to  
Compel Witnesses and Documents w/ Exhibit A – Letter to  
Brian Derdowski  
Dated September 24, 2007
- Exhibit 20** Order  
Dated September 24, 2007
- Exhibit 21** List of Witnesses  
Date stamped September 27, 2007
- Exhibit 22** Letter from Brian Derdowski to Anne Watanabe  
Dated September 27, 2007

- Exhibit 23**            Response to Appellants' Second Request to Compel Witnesses,  
                         Issue SEPA Notice and City Stipulations  
                         Dated September 24, 2007
- Exhibit 24**            Second Letter from Brian Derdowski to Anne Watanabe  
                         Dated September 27, 2007
- Exhibit 25**            Order  
                         Dated September 28, 2007
- Exhibit 26**            Letter from Brian Derdowski to Anne Watanabe  
                         Dated September 27, 2007 (Date stamped September 28, 2007)
- Exhibit 27**            City of Shoreline Hearing Memorandum  
                         Date stamped October 1, 2007